
UTAH LABOR COMMISSION

TYLER CHRISTENSEN,

Petitioner,

vs.

**ALUMINUM BUILDERS, INC. and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0480

Tyler Christensen asks the Utah Labor Commission to review Administrative Law Judge Hann's decision regarding Mr. Christensen's claim for benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On January 25, 2005, Mr. Christensen was driving a pickup truck for Aluminum Builders, Inc. The truck slid on a patch of ice, collided with another vehicle and rolled over. Mr. Christensen was injured when he was ejected from the truck cab. Aluminum Builders, Inc. and its insurance carrier, Workers' Compensation Fund (referred to jointly as "Builders" hereafter), accepted liability under the Utah Workers' Compensation Act for Mr. Christensen's injuries, but reduced the amount of his disability compensation by 15% pursuant to § 34A-2-302(3)(a)(i) of the Act on the grounds that Mr. Christensen's injuries were caused by his willful failure to wear his seat belt.

Mr. Christensen filed an application for hearing with the Commission to challenge Builders' reduction of his disability compensation. After a hearing, Judge Hann upheld the reduction. Mr. Christensen now asks the Commission to review Judge Hann's decision. Specifically, Mr. Christensen argues that his compensation is not subject to reduction under § 302(3)(a)(i) because his failure to wear his seat belt was not "willful" and was not the cause of his injuries.

FINDINGS OF FACT

The Commission adopts Judge Hann's findings of fact, which can be summarized as follows. On January 25, 2005, Mr. Christensen was making a delivery for Builders in a company pickup truck. The truck slid on a patch of ice, collided with another vehicle, and rolled over. Mr. Christensen was ejected out of the truck cab, thereby suffering the injuries for which he now claims workers' compensation benefits.

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The company pickup Mr. Christensen was driving at the time of his accident was equipped with seat belts. Mr. Christensen chose not to fasten his seat belt prior to the accident out of personal preference and because of his belief that, in an accident, seats belts are more likely to cause injury than to prevent injury.

DISCUSSION AND CONCLUSION OF LAW

The only issue before the Commission is whether the disability compensation due to Mr. Christensen because of his work injuries must be reduced by 15% pursuant to § 34A-2-302(3)(a)(i) of the Utah Workers' Compensation Act. Section 302(3)(a)(i) provides:

- (3) Except in case of injury resulting in death:
 - (a) compensation provided for by this chapter shall be reduced 15% when injury is caused by the willful failure of the employee:
 - (i) to use safety devices when provided by the employer;

Although Mr. Christensen argues that his failure to wear a seat belt on the date of the accident was not willful, the Commission concurs with Judge Hann's assessment that Mr. Christensen made a conscious and deliberate choice not to use the seat belts that were present in the pickup truck provided by Builders. Mr. Christensen's conduct is properly characterized as "willful" within the meaning of § 34A-2-302(3)(a).

Mr. Christensen also argues there is insufficient evidence to establish that his failure to wear a seat belt "caused" his injuries. However, Dr. Halliday, the emergency room physician who first treated Mr. Christensen after his accident, diagnosed Mr. Christensen as suffering from "multiple injuries **secondary to ejection** from a motor vehicle rollover." (Emphasis added.) Dr. Halliday's opinion is not contradicted by any other opinion or evidence. Consequently, Judge Hann correctly concluded that Mr. Christensen's failure to wear a seat belt caused him to be ejected from the truck and to suffer the injuries for which he now claims compensation.

In summary, the Commission agrees with Judge Hann's determination that the requirements of § 34A-2-302(3)(a)(i) have been satisfied and that Mr. Christensen's disability compensation must be reduced by 15%.

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ORDER

The Commission affirms Judge Hann's decision. It is so ordered.

Dated this 18th day of September, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.